

# The Gazette of India

EXTRAORDINARY

PART II—Section 2

PUBLISHED BY AUTHORITY

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No. 33] NEW DELHI, WEDNESDAY, MAY 26, 1954

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## PARLIAMENT SECRETARIAT

### NOTIFICATION

*New Delhi, the 26th May 1954*

**No. CS.7(33)/54-L.**—Under rule 49 of the Rules of Procedure and Conduct of Business in the Council of States, the Chairman has been pleased to order the publication in the *Gazette of India* of the following Bill together with the Statement of Objects and Reasons relating thereto, and the Bill and the Statement of Objects and Reasons are accordingly published for general information:—

[TO BE INTRODUCED IN THE COUNCIL OF STATES]

BILL NO. XIII OF 1954.

*A Bill to amend and codify the law relating to intestate succession among Hindus.*

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

## CHAPTER I

### PRELIMINARY

**1. Short title and extent.**—(1) This Act may be called the Hindu Succession Act, 1954.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

**2. Application of Act.**—(1) This Act applies—

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in India who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

*Explanation.*—The following persons are Hindus by religion within the meaning of this Act,—

(a) any illegitimate child both of whose parents are Hindus,

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged, and

(c) any person who is a convert or re-convert to the Hindu religion.

(2) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in sub-section (1).

**3. Definitions and interpretation.**—(1) In this Act, unless the context otherwise requires,—

(a) 'agnate'—one person is said to be an 'agnate' (*gotraja*) of another if the two are related by blood or adoption wholly through males;

(b) 'cognate'—one person is said to be a 'cognate' (*bandhu*) of another if the two are related by blood or adoption but not wholly through males;

(c) 'full blood', 'half blood' and 'uterine blood'—

(i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives;

(ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

*Explanation.*—In this clause 'ancestor' includes the father and 'ancestress' the mother;

(d) 'heir' means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

(e) 'intestate'—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect;

(f) 'related' means related by legitimate kinship:

Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate

descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative, shall be construed accordingly;

(g) 'son' includes a son adopted in accordance with the law for the time being in force relating to adoption among Hindus.

(2) In this Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

(3) For the purposes of this Act, the domicile of a Hindu shall be determined in accordance with the provisions contained in sections 6 to 18 inclusive of the Indian Succession Act, 1925 (XXXIX of 1925).

**4. Over-riding effect of Act.**—Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

## CHAPTER II

### INTESTATE SUCCESSION

#### *General*

**5. Act not to apply to certain properties.**—This Act shall not apply to—

(i) any joint family property or any interest therein which devolves by survivorship on the surviving members of a coparcenary in accordance with the law for the time being in force relating to devolution of property by survivorship among Hindus;

(ii) any property succession to which is regulated by the Indian Succession Act, 1925 (XXXIX of 1925) by reason of the provisions contained in section 24 of the Special Marriage Act, 1872 (III of 1872);

(iii) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment;

(iv) the following estates situate in the State of Travancore-Cochin, namely, Idapally, Poonjar and Kilimanoor estates and the Valiamma Thanpuran Kovilagam estate, including the Palace Fund.

**6. Intestate succession to be regulated by this Chapter.**—Save as otherwise expressly provided in section 5, this Chapter regulates the

succession to the property of a Hindu dying intestate after the commencement of this Act in the following cases, namely:—

(a) where the property is movable property, unless it is proved that the intestate was not domiciled in the territories to which this Act extends at the time of his or her death;

(b) where the property is immovable property situate in the said territories whether the intestate was domiciled in the said territories at the time of his or her death or not.

**7. No distinction between divided and undivided sons, etc., for purposes of succession.**—For purposes of intestate succession, no distinction shall be made—

(1) between a son who was divided and a son who was undivided from the intestate or between a son who was divided and a son who was reunited with him;

(2) between a female heir who is married and one who is unmarried, or a female heir who is a widow and one who is not a widow or between a female heir who is poor and one who is rich or between a female heir with issue and one without issue or possibility of issue.

*Succession to the property of males*

**8. General rules of succession in the case of males.**—Save as otherwise expressly provided in sections 16 to 26 inclusive, the property of a male Hindu dying intestate shall devolve according to the rules set out in this Chapter:—

(a) firstly, upon the preferential heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no preferential heir of class I, then upon the preferential heirs being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no preferential heir of any of the two classes, then upon his relatives being the agnates specified in section 12; and

(d) lastly, if there is no agnate, then upon his relatives being the cognates specified in section 13.

**9. Order of succession among preferential heirs.**—As amongst the preferential heirs, those in class I of the Schedule shall take together, and those standing in the first entry in class II shall be preferred to those standing in the second entry, and those standing in the second entry to those standing in the third entry and so on in succession.

**10. Distribution of property among preferential heirs in class I.**—The property of an intestate shall be divided among the preferential heirs in class I in accordance with the following rules:—

*Rule 1.*—The intestate's widow, or, if there are more widows than one, all the widows together, shall take one share.

*Rule 2.*—Each surviving son of the intestate shall take one share.

*Rule 3.*—The heirs in the branch of each pre-deceased son of the intestate shall take between them one share if there is a son or son's son of such pre-deceased son; and half a share in other cases.

*Rule 4.*—The distribution of the share or half share referred to in rule 3 among the heirs in the branch of a pre-deceased son shall be so made that his widow (or widows together) and each of the surviving sons get equal portions and the branch of each of his pre-deceased sons gets the same portion if it contains a son of such pre-deceased son and one-half of such portion in other cases.

*Rule 5.*—Each surviving daughter of the intestate shall take half a share.

*Rule 6.*—The heirs in the branch of each pre-deceased daughter of the intestate shall take between them the share of such predeceased daughter.

**11. Mode of distribution amongst preferential heirs in class II.**—The property of an intestate shall be divided between the preferential heirs in any one entry in class II of the Schedule so that they share equally.

**12. Agnates who are heirs.**—In the absence of any preferential heirs specified in class I or class II of the Schedule, agnates of the deceased, related to the intestate within five degrees, shall be entitled to succeed in accordance with the rules set out in this Act.

**13. Cognates who are heirs.**—In the absence of any preferential heir and agnates, cognates of the deceased, related to the deceased within five degrees, shall be entitled to succeed in accordance with the rules set out in this Act.

**14. Order of succession amongst agnates and cognates.**—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:—

*Rule 1.*—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

*Rule 2.*—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of ascent.

*Rule 3.*—Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

*Rule 4.*—Where the two lines cannot be so distinguished, the heir who is a male is preferred to the heir who is a female.

*Rule 5.*—Where neither heir is entitled to be preferred to the other under the foregoing rules, they take together.

**15. Computation of degrees.**—(1) For the purposes of determining the order of succession amongst agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed exclusive of the intestates.

(3) Every generation constitutes a degree either ascending or descending.

*Succession to the property of male Marumakkattayis, etc.*

**16. Rules of succession to male Marumakkattayis, etc., dying intestate.**—Notwithstanding anything contained in this Act, the separate or self-acquired property of a male Hindu who dies intestate in respect thereof, shall—

(a) in the case of a person to whom the Marumakkattayam or Aliyasantana law would have applied if this Act had not been passed, devolve in the order and according to the rules set out in sections 17 to 24 inclusive; and

(b) in the case of a person to whom the Nambudri law would have applied if this Act had not been passed, devolve in the order and according to the rules set out in section 25.

**17. Lineal descendant defined.**—In sections 18 to 25 inclusive and in sections 30 and 31, the expression “lineal descendant”, used with reference to any person, means any descendant of that person, whether in the male or female line or partly in the male and partly in the female line, and includes any child of that person.

**18. Devolution of property where there is a lineal descendant.**—(1) Where the intestate has left him surviving a lineal descendant or descendants and also his mother or a widow or widows or both his mother and a widow or widows, the whole of the intestate's property shall devolve on them.

(2) In the absence of the mother and widow, the whole of the property shall devolve on the lineal descendant or descendants.

**19. Rules of distribution.**—The distribution of the property among the heirs referred to in section 18 shall be made in accordance with the following rules, namely:—

(a) each child whether son or daughter shall be entitled to an equal share;

(b) where a child has predeceased the intestate, the lineal descendants of such child shall, subject to the provisions of clause (e), be entitled to the share which the child would have taken had he or she survived the intestate;

(c) grand-children of the intestate by a deceased child shall be entitled in equal shares to what such child would have taken had he or she survived the intestate:

Provided that where any such grand-child has also predeceased the intestate, the lineal descendants of such grand-child shall,

subject to the provisions of clause (e), be entitled to the share which the grand-child would have taken had he or she survived the intestate;

(d) the property shall devolve in the like manner on the remoter surviving lineal descendants of the intestate;

(e) the descendants of a child, grand-child or other lineal descendant of the intestate shall not be entitled to any share in his or her property, if such child, grand-child or other descendant is living at the time of the death of the intestate;

(f) the widow, or, where there are more widows than one all the widows together, shall be entitled to a share equal to that of a child, such share being taken equally by the widows where there are more widows than one:

(g) the mother shall be entitled to a share equal to that of a child.

**20. Devolution of property where there is no lineal descendant but there is a widow or mother.**—(1) Where the intestate has not left him surviving any lineal descendant but has left his mother and a widow or widows, one-half of the property shall devolve on his mother and the other half on his widow or widows in equal shares.

(2) In the absence of a widow, the whole of the property shall devolve on the mother.

**21. Devolution of property where there is no mother but there is a widow or lineal descendant of mother.**—(1) Where the intestate has not left him surviving any lineal descendant or his mother but has left a widow or widows and also a lineal descendant or descendants of his mother, one-half of the property shall devolve on the widow or widows in equal shares and the other half on such lineal descendant or descendants.

(2) In the absence of any lineal descendant of the intestate's mother, the whole of the property shall devolve on the widow or widows in equal shares and, in the absence of the widow, the whole of the property shall devolve on the mother's lineal descendants.

**22. Devolution where there is maternal grand-mother or her descendant or the father.**—(1) Where the intestate has not left him surviving any of the heirs mentioned in sections 18, 20 and 21 but has left his father and his maternal grand-mother or her lineal descendant or descendants, one-half of the property shall devolve on his father and the other half on his maternal grand-mother or, in her absence, on her lineal descendant or descendants.

(2) In the absence of any lineal descendant of the maternal grand-mother the whole of the property shall devolve on the father, and, in the absence of the father, the whole of the property shall devolve on the maternal grand-mother or her lineal descendant or descendants, as the case may be.

**23. Devolution in other cases.**—(1) Where the intestate has not left him surviving any of the heirs mentioned in sections 18, 20, 21

and 22, the whole of the property shall devolve on his mother's maternal grand-mother, or, in her absence, on her lineal descendant or descendants.

(2) In the absence of any such descendant, the whole of the property shall devolve on a remoter female ascendant of the intestate in the female line or, in her absence, on her lineal descendant or descendants, the nearer ascendant and her descendants, excluding the more remote ascendant and her descendants.

**24. Rules for distribution among lineal descendants of mother or other ascendant.**—The distribution of the intestate's property or any share thereof to which two or more lineal descendants of his mother or other ascendant are entitled under the foregoing sections shall be made in accordance with the rules specified in clauses (a) to (e) of section 19, as if the mother or other ascendant had died intestate in respect of such property or share leaving her surviving the descendants aforesaid.

**25. Special rules of succession to Nambudri males.**—Notwithstanding anything contained in this Act, the separate or self-acquired property of a male Hindu to whom the Nambudri law would have applied, if this Act had not been passed shall, if he dies intestate in respect thereof, devolve in the order, and in accordance with the rules, specified below, namely:—

(a) where the intestate has left him surviving any lineal descendant or descendants or a widow or widows or both such descendant or descendants and a widow or widows, the whole of the property shall devolve on them in accordance with the rules specified in clauses (a) to (f) of section 19;

(b) where the intestate has not left him surviving any of the relatives mentioned in clause (a) the property shall devolve in the order, and in accordance with the rules, specified in sections 7 to 15.

*Intestate succession to the property of females*

**26. Property of a female Hindu to be her absolute property.**—(1) Save as otherwise provided in sub-section (2), where a female Hindu acquires any property, movable or immovable, after the commencement of this Act, whether such property is acquired by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase, or by prescription, or in any other manner whatsoever, such property shall be held by her as full owner thereof and not as a limited owner.

*Explanation.*—Any such property as is referred to in this sub-section shall also include property held by a female Hindu as her *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to—

(a) any property acquired by a female Hindu by way of gift or under a will, where the terms of the gift or will, expressly or by necessary implication, prescribe a restricted estate in such property; or



(b) any ancestral property acquired by a female Hindu by way of inheritance or at a partition, where under any law or custom or usage having the force of law a male owner acquiring any such property in similar circumstances would have held it subject to restrictions on his right of alienation with respect thereto;

and any such property shall be held by the female Hindu subject to the terms of the will or gift or, as the case may be, subject to the same restrictions as would have applied if the property had been held by a male owner.

**27. General rules of succession in the case of female Hindus.**—Save as otherwise expressly provided in sections 29, 30 and 31, the property of a female Hindu held by her as full owner, if she dies intestate in respect thereof, shall devolve according to the rules set out in section 28—

- (a) firstly, upon the children, including the children of any pre-deceased child;
- (b) secondly, upon the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the husband;
- (e) fifthly, upon the heirs of the mother; and
- (f) lastly, upon the heirs of the father.

**28. Order of succession and manner of distribution among heirs of a female Hindu.**—The order of succession among the heirs referred to in section 27 and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:—

*Rule 1.*—Among the heirs specified in section 27, those in one clause shall be preferred to those in any succeeding clause, and those included in the same clause shall take together.

*Rule 2.*—If any child of the intestate had predeceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such child shall take the share which such child would have taken if living at the intestate's death.

*Rule 3.*—The devolution of the property of the intestate on the heirs referred to in clauses (d), (e) and (f) of section 27 shall be in the same order and according to the same rules as would have applied if the property had been the husband's or the mother's or the father's, as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

**29. Special rules of succession in the case of certain properties of female Hindus.**—Nothing contained in sections 26 to 28 shall apply to any property in which a female Hindu had, at the commencement of this Act, the limited estate known as the Hindu woman's estate,

and such property shall, on her death, devolve on the persons who, under this Act, would have been the heirs of the last full owner thereof if such owner had died intestate immediately after her.

*Succession to the property of female Marumakkattayis, etc.*

**30. Rules of succession to Marumakkattayam or Aliyasantana female dying intestate.**—Notwithstanding anything contained in this Act, the separate or self-acquired property of a female Hindu to whom the Marumakkattayam or Aliyasantana law would have applied if this Act had not been passed shall, if she dies intestate in respect thereof, devolve in the order and according to the rules set out hereunder, namely:—

(a) where the intestate has left her surviving a lineal descendant or descendants, the whole of such property shall devolve on such descendant or descendants in accordance with the provisions contained in clauses (a) to (e) of section 19;

(b) in the absence of any lineal descendant of the intestate, the whole of the property shall devolve on the intestate's mother or, in her absence, on her lineal descendant or descendants;

(c) where the intestate has not left her surviving any lineal descendant of herself or of her mother but has left her husband and her maternal grand-mother or her lineal descendant or descendants, one-half of the property shall devolve on her husband and the other half shall devolve on her grand-mother or, in her absence, on her lineal descendant or descendants;

(d) in the absence of the intestate's maternal grand-mother and her lineal descendants, the whole of the property shall devolve on the intestate's husband, and, in the absence of the husband, the whole of the property shall devolve on her maternal grand-mother or her lineal descendant or descendants as the case may be;

(e) where the intestate has not left her surviving any of the heirs mentioned in the foregoing clauses, the whole of the property shall devolve on her mother's maternal grand-mother or in her absence on her lineal descendant or descendants and, in the absence of any such descendant, on a remoter female ascendant in the female line or, in her absence, on her lineal descendant or descendants, the nearer ascendant and her descendants excluding the more remote ascendants and her descendants;

(f) the distribution of the intestate's property or any share thereof to which two or more lineal descendants of her mother or other ascendant are entitled under the foregoing clauses shall be made in accordance with the rules specified in clauses (a) to (e) of section 19, as if the mother or other ascendant had died intestate in respect of such property or share leaving her surviving the descendants aforesaid.

**31. Rules of succession to Nambudri female dying intestate.—**

Notwithstanding anything contained in this Act, the separate or self-acquired property of a female Hindu to whom the Nambudri law would have applied if this Act had not been passed, shall, if she dies intestate in respect thereof, devolve in the order, and in accordance with the rules set out hereunder, namely:—

(a) where the intestate has left her surviving any lineal descendant or descendants, the whole of the property shall devolve on such descendant or descendants in accordance with the rules specified in clauses (a) to (e) of section 19;

(b) in the absence of any lineal descendant, the property shall devolve on her husband;

(c) in the absence of the husband, the property shall devolve upon the other heirs in the order, and in accordance with the rules set out in section 27.

*Succession to the property of a hermit*

**32. Rules for hermits, etc.—**(1) Where a person completely and finally renounces the world by becoming a hermit (*vanaprastha*), or an ascetic (*yati* or *sanyasi*) or a perpetual religious student (*naishthika brahmachari*), his property shall devolve upon his heirs in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any property acquired by such a person after his renunciation shall devolve on his death, not upon his relatives, but as follows:—

(a) in the case of a hermit (*vanaprastha*), upon a spiritual brother belonging to the same hermitage (*dharmabhratraikatirtha*);

(b) in the case of an ascetic (*yati* or *sanyasi*), subject to any custom or usage governing the case, upon his virtuous disciple (*sacchishya*); and

(c) in the case of a perpetual religious student (*naishthika brahmachari*), upon his preceptor (*acharya*).

*General provisions relating to succession*

**33. Full blood preferred to half blood.—**Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

**34. Mode of succession of two or more heirs.—**If two or more heirs succeed together to the property of an intestate, they shall take the property,—

(a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and

(b) as tenants-in-common and not as joint tenants.

**35. Right of child in womb.**—A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

**36. Presumption of survivorship.**—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

**37. Application of Partition Act, 1893, in certain cases.**—Where, after the commencement of this Act, a share in any immovable property of an intestate or in any business carried on by such intestate, whether solely or in conjunction with others,—

(a) devolves upon one or more of the intestate's son, son's son, son's son's son, together with other relatives, and one of the latter sues for partition, or

(b) devolves upon a female heir, together with any of the male relatives specified in class I of the Schedule, and any one of such male relatives compels the female heir to take her share of the property of the intestate for separate enjoyment (which he is hereby empowered to do),

the provisions of the Partition Act, 1893 (IV of 1893) shall apply as if there was a partition and as if he or she were the transferee of a share of a dwelling house and the intestate's family were an undivided one.

#### *Disqualification of heirs*

**38. Hermit, etc., disqualified.**—A person who has completely and finally renounced the world in any of the modes set forth in subsection (1) of section 32 shall be disqualified from inheriting the property of any of his relatives by blood, marriage or adoption.

**39. Unchaste wife disqualified.**—A woman, who after marriage, has been unchaste during her husband's lifetime, shall, unless he has condoned the unchastity, be disqualified from inheriting his property:

Provided that the right of a woman to inherit to her husband shall not be questioned on the above ground, unless a Court of law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

**40. Disqualification of certain widows remarrying.**—The widow of a predeceased son, the widow of a predeceased son of a predeceased son, the father's widow and the brother's widow shall not be entitled to succeed as heirs, if on the date the succession opens, they have remarried.

**41. Murderer disqualified.**—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

**42. Convert's descendants disqualified.**—Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be one by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

**43. Succession when heir disqualified.**—If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

**44. Disease, defect, etc., not to disqualify.**—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.

#### *Escheat*

**45. Failure of heirs.**—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall go to the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

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### CHAPTER III

#### TESTAMENTARY SUCCESSION

**46. Testamentary succession.**—Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925 (XXXIX of 1925), or any other law for the time being in force and applicable to Hindus.

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### THE SCHEDULE

(See section 8)

#### PREFERENTIAL HEIRS

##### *Class I*

Son; widow; daughter; son or daughter of a predeceased son; son or daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son.

*Class II*

I. Father; mother.

II. (1) Son's daughter's son, (2) son's son's daughter, (3) son's daughter's daughter, (4) brother, (5) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

*Explanation.*—In this Schedule, references to a brother or sister, do not include references to a brother or sister by uterine blood.

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### STATEMENT OF OBJECTS AND REASONS

This, the third instalment of the Hindu Code, seeks to amend and codify the law relating to intestate succession. The original draft of the provisions relating to intestate succession contained in the Rau Committee's Bill underwent substantial changes in the hands of the Select Committee which considered the Rau Committee's Bill in 1948. This Bill follows to a large extent the scheme adopted by the Select Committee but takes into account the various suggestions made from time to time for the amendment of the Select Committee's version of the Bill. In particular, special provisions have been included for regulating succession to the property of intestates governed by the Marumakkattayam, Aliyasantana or Nambudri laws of inheritance.

The notes on clauses explain in detail the various provisions in the Bill.

C. C. BISWAS.

NEW DELHI;

The 20th May, 1954.

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### *Notes on clauses*

*Clause 1.*—Like the Hindu Marriage and Divorce Bill and the Hindu Minority and Guardianship Bill, this law also will have extra-territorial effect.

*Clauses 2 and 4.*—These clauses are and will be a common feature of all Bills relating to Hindu law.

*Clause 3.*—The expression “related” is so defined that the rights of illegitimate children are safeguarded as against their mother and their own legitimate descendants. This definition follows the Rau Committee’s draft where it is pointed out that to confine relationship to legitimate kinship might prevent a Naikin’s property from passing to her son or daughter and that there is also no reason why Naikin’s children should not have mutual rights of inheritance.

The question of domicile becomes relevant with respect to clause 6, and domicile is determined by the usual rules applicable thereto as laid down in sections 6 to 18 of the Indian Succession Act, 1925.

*Clause 5.*—This clause excludes from the application of this law joint-family property which under the Mitakshara law devolves on heirs by the rule of survivorship and property to which the Indian Succession Act, 1925, applies by reason of a marriage having taken place under the Special Marriage Act, 1872. It also excludes estates which are in their nature or by custom impartible.

*Clause 6.*—This clause lays down the well-known principles which apply to regulate succession to the movable and immovable properties of an intestate. (Compare section 5 of the Indian Succession Act, 1925).

*Clause 7.*—Under the existing Hindu law, rules of succession exist whereby a reunited son may be preferred to a son who remains separate; a maiden daughter may be preferred to a married daughter; as between married daughters, a married daughter who is indigent may be preferred to a married daughter who is possessed of means and so on. In view of the scheme of succession adopted in the Bill, these distinctions have necessarily to be ruled out.

*Clauses 8 to 10.*—Before 1937, the “simultaneous heirs” of a male Hindu dying intestate comprised only the son, the son of a pre-deceased son and the son of a pre-deceased son of a pre-deceased son. The Hindu Women’s Rights to Property Act, 1937, added to the list the widows of the first two as well as the intestate’s own widow. Class I of the preferential heirs in the Schedule now adds to the existing list of simultaneous heirs, the daughter, and further seeks, as far as possible, to treat the other grandchildren of an intestate, whose parent has pre-deceased the intestate, on the same footing as the son of a pre-deceased son, except that in the former case the share to be divided among the children will be less than in the latter case.

The following illustrations explain how shares will be allotted in certain cases:—

#### *Illustrations*

(1) The surviving heirs of an intestate are three sons, A, B and C, five grandsons by a pre-deceased son, D, and two great grandsons by a pre-deceased son of another pre-deceased son E. A, B and C take one share each under rule 2, and the branches of D and E get one share each under rule 3. The grandsons in D’s branch and the great grandsons in E’s branch divide the share.

allotted to their respective branches equally by virtue of rule 4. Each son of the intestate, therefore, takes one-fifth of the heritable property, each grandson one-twenty-fifth, and each great-grandson one-tenth.

(2) Only a widow or daughter or daughter's daughter or daughter's son or son's daughter survives an intestate. She or he takes the whole of the heritable property.

(3) The surviving heirs are the widow and two grandsons by a pre-deceased son. The widow takes one share under rule 1 and the grandsons together take one share under rule 3. The widow therefore takes one-half of the heritable property and each grandson one-fourth.

(4) The surviving heirs are a widow, a daughter and two grandchildren by a pre-deceased daughter. The widow takes one share under rule 1; the daughter gets half a share under rule 5; and the grandchildren by the pre-deceased daughter divide the share allotted to the mother, viz., half a share equally between themselves by virtue of rule 6. The widow, therefore, gets, one-half of the heritable property, the daughter one-fourth and each grandchild one-eighth.

(5) The surviving heirs are a daughter and the widow of a pre-deceased son. Under rule 5, the daughter takes half a share and under rule 3 the daughter-in-law also takes half a share. The heritable property is thus equally divided between the two.

(6) The surviving heirs are a son, a daughter and the widow of a pre-deceased son. Under rule 2, the son gets one share; under rule 5 the daughter gets half a share; under rule 3 the widow of the pre-deceased son gets half a share. In the result, the son takes half the property and the daughter and the daughter-in-law take one-fourth each.

(7) The surviving heirs are a son, a daughter, and the widow and the son of a pre-deceased son. Under rule 2 the son gets one share; under rule 5 the daughter gets half a share; under rule 3 the widow and the son of a pre-deceased son get between them one share which has then to be equally distributed between them. In the result, the son takes two-fifths of the property and the other heirs one-fifth each.

(8) The surviving heirs are—

- (a) a widow,
- (b) a son,
- (c) a daughter,
- (d) the widow of a pre-deceased son,
- (e) the widow and a son and daughter of another pre-deceased son.

Under rule 1 the widow gets one share; under rule 2 the son gets one share; under rule 5 the daughter gets half a share; under rule 3 the widow of the first mentioned pre-deceased son gets half a share; under the same rule the heirs mentioned in (e) above between them get one share which has then to be distri-



distributed among them. In the result, the widow and the son of an intestate each take one-fourth of the property, the daughter and the daughter-in-law mentioned in (d) each take one-eighth; the widow and the daughter of the other pre-deceased son mentioned in (e) take one-tenth each and the daughter of the pre-deceased son one-twentieth.

(9) The surviving heirs are—

- (a) a son by a pre-deceased son,
- (b) a son and daughter by a pre-deceased daughter,
- (c) two daughters by a pre-deceased son.

Under rule 3 the son of the pre-deceased son gets one share; under rule 6 the son and daughter of the pre-deceased daughter between them get half a share; and under rule 3 the two daughters of the pre-deceased son mentioned in (c) divide half a share equally between themselves. In the result, the son of the pre-deceased son takes one half the son and daughter of the pre-deceased daughter mentioned in (b) take one sixth and one twelfth respectively and the two daughters of the pre-deceased son mentioned in (c) take one eighth each.

(10) The surviving heirs are—

- (a) a son,
- (b) the widow and three sons of a pre-deceased son,
- (c) the widow of a pre-deceased son of the pre-deceased son referred to in (b).

The son gets one share under rule 2, and the heirs in entries (b) and (c) together get one share. The latter share should be distributed by virtue of rule 4 so that the widow and each of the sons in entry (b) get one portion each and the widow in entry (c) gets one-half of such a portion. In the result, the intestate's son gets one-half of the heritable property, the widow of his pre-deceased son gets one-ninth, each of the three sons of such pre-deceased son also gets one-ninth and the widow of the intestate's grandson gets one-eighteenth.

*Clauses 11 to 14.*—With respect to the other heirs, the scheme of this Bill follows the scheme of the Select Committee on the Hindu Code which found the Rau Committee's enumerated heirs defective because the list of heirs was too large and no limit was set to the *agnates* or *cognates* entitled to succeed. That Select Committee also found the order of preference not satisfactory and did not like uniformity in succession to be broken in any case. Apart from the changes made in clause 10 and the Schedule, the present Bill follows the scheme of the Select Committee, the heirs being rearranged on a more rational basis and relatives who are far removed from the intestate and persons who are not heirs at all, like *Acharya* and *Sishya*, being eliminated from the list of heirs. Further, certain persons have been grouped together for simultaneous succession, like father and mother, brother and sister and so on. The number of possible heirs of *agnates* and *cognates* is also narrowed down.

The illustrations given below explain how the rules laid down in clause 14 will operate:—

### *Illustrations*

In the following illustrations, the letters F and M stand for the father and mother respectively in that portion of the line which ascends from the intestate to the common ancestor, and the letters S and D for the son and daughter respectively in that portion of the line which descends from the common ancestor to the heir. Thus MFSS stands for the intestate's mother's father's son's son (mother's brother's son) and FDS for the intestate's father's daughter's son (sister's son).

(i) The competing heirs are (1) FFSSD (father's brother's son's daughter) and (2) FDDS (sister's daughter's son). Although No. (2) is descended from a nearer ancestor, yet, as No. (1) is an agnate while No. (2) is only a cognate, No. (1) is preferred to No. (2).

(ii) The competing heirs are (1) SDSS (son's daughter's son's son) and (2) FDDS (sister's daughter's son). No. (1) who has no degree of ascent is preferred to No. (2) who has one degree of ascent.

(iii) The competing heirs are (1) FDDD (sister's daughter's daughter) and (2) MFSSD (maternal uncle's son's daughter). The former who has one degree of ascent is preferred to the latter who has two such degrees.

(iv) The competing heirs are (1) FDSSS (sister's son's son's son) and (2) MFSSD (maternal uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(v) The competing heirs are (1) MFDSS (mother's sister's son's son) and (2) MFFDS (mother's father's sister's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(vi) The competing heirs are (1) MFM (mother's father's mother) and (2) FFFDSS (father's father's sister's son's son). The number of degrees of ascent in both cases is the same, viz., three, but the former has no degree of descent while the latter has three such degrees. The former is therefore preferred.

(vii) The competing heirs are (1) FMF (father's mother's father) and (2) MFF (mother's father's father). The number of degrees of ascent in both the cases is the same, and there are no degrees of descent. The lines of the two heirs diverge at the very first point, No. (1) being in the male line and No. (2) in the female line. No. (1) is preferred to No. (2).

(viii) The competing heirs are (1) FDSS (sister's son's son) and (2) FDDS (sister's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point, No. (1) is in the male line and No. (2) in the female line. No. (1) is therefore preferred.

•(ix) The competing heirs are (1) FMFSS (father's mother's brother's son) and (2) FMFDS (father's mother's sister's son). The former is preferred.

(x) The competing heirs are (1) FDDS (sister's daughter's son) and (2) FDDD (sister's daughter's daughter). The former is preferred.

(xi) The competing heirs are a daughter's daughter's son of one sister (FDDDS) and a daughter's daughter's son of another sister (FDDDS). Both of them take the estate in equal shares.

Clause 15.—The illustrations given below explain how degrees are to be computed.

### *Illustrations*

(i) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent, but has three degrees of ascent represented in order by (1) the intestate's father, (2) that father's mother, and (3) her father (the heir).

(ii) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but has four degrees of ascent represented in order by (1) the intestate's father, (2) that father's mother, (3) her father, and (4) his mother (the heir).

(iii) The heir to be considered is the son's daughter's son's daughter of the intestate. She has no degrees of ascent, but has four degrees of descent represented in order by (1) the intestate's son, (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate. He has three degrees of ascent represented in order by (1) the intestate's mother, (2) her father, and (3) that father's father, and two degrees of descent represented in order by (1) the daughter of the common ancestor, *viz.*, the mother's father's father and (2) her son (the heir).

Clauses 16 to 25.—These clauses lay down special rules of succession in the case of male Hindus governed by the Marumakkattayam, Aliyasantana or Nambudri laws of inheritance. A departure has necessarily to be made in these cases because the laws applicable to these persons have always been based on the matriarchate while the laws in the rest of India are founded upon the agnatic family. These clauses are based on a draft furnished by the Government of Madras.

Clause 26.—The Rau Committee vested a Hindu woman with full rights over *stridhana* property and laid down certain rules of succession with respect to *stridhana*. The Select Committee on the Hindu Code incorporated the substance of all these provisions in a separate Chapter headed "Woman's Property" and provided that after the commencement of the Code, whatever property was acquired by a woman became her absolute property and devolved on her own heirs.

Clause 26 follows the Select Committee's draft and declares that whatever property is acquired by a Hindu woman after this law, it shall be her absolute property, and the term "property" is defined as comprehensively as possible for the purpose.

*Clauses 27 and 28.*—Under the existing law, succession to *stridhana* property varies according as a woman is married or unmarried and according as she is married in an approved form or in an unapproved form. It also varies according to the source from which the *stridhana* came. The rules of descent again vary from school to school. Clause 27, however, evolves a new and uniform scheme of succession to a woman's property and clause 28 regulates the manner of distribution thereof.

*Clause 29.*—This clause contains a saving with respect to properties in which a female Hindu has at the commencement of this law only a limited estate.

*Clauses 30 and 31.*—See the notes to clauses 16 to 25.

*Clause 32.*—Under the existing law, where a person enters into a religious order renouncing all worldly affairs, his action is tantamount to civil death and it excludes him altogether from inheritance. But if he acquires property subsequent to the renunciation, it passes to his spiritual heirs. This clause is in accordance with the existing law.

*Clause 33.*—The illustrations given below explain the scheme of this clause.

#### *Illustrations*

(i) A brother by full blood is preferred to a brother by half blood; but a brother by half blood succeeds before a brother's son by full blood, a brother being a nearer heir than a brother's son.

(ii) A paternal uncle by half blood is preferred to a Paternal uncle's son by full blood, an uncle being a nearer heir than an uncle's son.

(iii) A full brother's daughter's daughter is preferred to a half brother's daughter's daughter but the former is not preferred to a half brother's daughter's son, as the nature of the relationship is not the same in the two cases. The latter, who is a nearer heir by virtue of rule 4 in section 14 is preferred although he is only related by half blood.

*Clauses 34, 35 and 36.*—These clauses are self-explanatory and are in accordance with the existing law.

*Clause 37.*—Where any immovable property or any business devolves upon male and female heirs, this clause would enable the male heirs, if they so desire, to compulsorily buy off the share of the female heirs.

*Clause 38.*—See the notes to clause 32.

*Clause 39.*—Under the existing law, chastity during the life time of the husband is a condition precedent to the taking by the widow of her husband's estate unless the unchastity had been condoned by him.

*Clause 40.*—The principle underlying this clause is that the widow is the surviving half of her husband and, therefore, when she remarries, she ceases to continue to be such. (Section 2 of the Hindu Widows Remarriage Act, 1856, also contains a somewhat similar provision). As the law stands, remarriage disables a widow of a *gotraja sapinda* from succeeding to the property of a male Hindu when on the date the succession opens, she has ceased to be the widow of a *gotraja sapinda* by reason of remarriage. This rule is being applied to the widows mentioned in the Schedule who are the only widows now entitled to succeed.

*Clause 41.*—A murderer even if not disqualified under Hindu law from succeeding to the estate of the person whom he has murdered is so disqualified upon principles of justice, equity and good conscience. The murderer is not to be regarded as the stock for a fresh line of descent but should be regarded as non-existent when the succession opens (51 I.A. 368).

*Clause 42.*—Change of religion and loss of caste, which at one time were grounds of forfeiture of property and of exclusion from inheritance, have ceased to be so since the passing of the Caste Disabilities Removal Act, 1850. But that Act applies only to protect the actual person who either renounces his religion or has been excommunicated. Consequently, where the property of a Muslim converted from Hinduism has passed according to Muslim law to his descendants, Hindu collaterals cannot claim by virtue of that Act to succeed under Hindu law. This clause, therefore lays down that the heir should be a Hindu when the succession opens. Reconversion after the succession opens will not, therefore, be possible and this restriction will in most cases remove any abuse of the provision contained in the clause.

*Clause 44.*—Under the Hindu law, blindness, deafness, dumbness, want of any limb or organ, lunacy, idiocy, leprosy and other incurable diseases disqualified a person from inheriting but the Hindu Inheritance (Removal of Disabilities) Act, 1928, declared that no person shall be excluded from inheritance on any of these grounds unless he was from birth a lunatic or an idiot. This clause seeks to remove all such disqualifications.

*Clause 45.*—Escheat as such has not been unknown to Hindu law.

*Clause 46.*—This clause confirms the existing law that a Hindu may dispose of by testamentary disposition any property which he is capable of so disposing of.

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S. N. MUKERJEE,

Secretary.

